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Letter dated 8 August 2005 from the Permanent Representative of India to the United Nations addressed to the President of the Security Council

On behalf of the Government of India, I have the honour to inform you that the Indian Parliament passed the Weapons of Mass Destruction and their Delivery System (Prohibition of Unlawful Activities) Bill on 13 May 2005. After receiving the Presidential assent on 6 June 2005, the Act (also referred to as the WMD Act) has been published in the Gazette of India (copy enclosed).

The WMD Act provides overarching and integrated legislation prohibiting unlawful activities in relation to weapons of mass destruction and their delivery systems. While reiterating India's firm commitment to safeguard its security as a nuclear weapon State and its undiminished commitment to global nuclear disarmament, the Act seeks to effectively translate at the operational level India's commitment to prevent proliferation of weapons of mass destruction. The legislation builds upon the existing regulatory framework related to controls over the export of WMD usable materials, equipment and technologies.

Over the years India has enacted a corpus of laws dealing with activities of direct or indirect relevance to weapons of mass destruction, their means of delivery and related dual-use materials, equipment and technologies, such as the Atomic Energy Act, 1962; the Chemical Weapons Convention Act, 2004; the Environment Protection Act, 1986; the Foreign Trade (Development and Regulations) Act, 1992; the Customs Act, 1962; the Unlawful Activities (Prevention) Amendment Act, 2004; and the Explosive Substances Act, 1908. The WMD Act is in addition to the existing framework of legal and administrative controls: wherever any offence is punishable under the WMD Act as well as under any other act in force, the offender will be liable to be punished under that act which imposes greater punishment.

Specifically, the WMD Act fulfils India's obligations pursuant to Security Council resolution 1540 (2004) on non-proliferation of weapons of mass destruction by prohibiting the possession, transportation, acquisition or development of nuclear weapons, chemical weapons or biological weapons by non-State actors.

The Act updates the present system of export controls in India with a view to making it more contemporary, by introducing transit and trans-shipment controls, re-transfer provisions, technology transfer controls, brokering controls and end-use based controls. The Act prohibits the export of any good or technology from India if the exporter knows that it is intended to be used in a WMD programme.

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It is as much a concern to India as to any other country that sensitive and dual-use technologies should not fall into the wrong hands. In order to ensure strict and effective control over such technologies, the Act includes a definition of the term "technology" and regulates its flow by introducing "transfer controls" over such technologies. It regulates the flow of sensitive and dual-use technologies and know-how from India, or by Indians abroad. It also seeks to regulate their flow to foreigners while in India. The provisions of this Act apply to citizens of India outside India, Indian companies with branches or subsidiaries abroad, persons in the service of the Government of India, within and beyond India, and foreigners while in India. The Act imposes a general prohibition on brokering, by Indians or foreign nationals in India, in any such transaction that is prohibited or regulated under the Act.

Regulation of transfers of sensitive and dual-use technologies has assumed importance in view of the increasing capability of India to produce such technologies, though the originators of such technologies continue to be overwhelmingly parastatal in India. The requirement to regulate also arises out of the need to ensure comprehensive control over unique or closely held, indigenously developed technology or know-how. It also meets the requirement to ensure that such technologies do not fall into the wrong hands.

I would appreciate if this letter, together with its enclosure, could be circulated as a document of the Security Council.

(*Signed*) Nirupam **Sen**
Ambassador
Permanent Representative of India to the United Nations

Annex to the letter dated 8 August 2005 from the Permanent Representative of India to the United Nations addressed to the President of the Security Council

रजिस्ट्री सं॰ डी॰ एस॰—(एन)04/0007/2003—05 REGISTERED NO. DL—(N)04/0007/2003—05

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The Gazette of India

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 7th June, 2005/Jyaistha 17, 1927 (Saka)

The following Act of Parliament received the assent of the President on 6th June, 2005, and is hereby published for general information:—

THE WEAPONS OF MASS DESTRUCTION AND THEIR DELIVERY SYSTEMS (PROHIBITION OF UNLAWFUL ACTIVITIES) ACT, 2005

No. 21 OF 2005

[*6th June*, 2005.]

An Act to prohibit unlawful activities, in relation to weapons of mass destruction and their delivery systems and for matters connected therewith or incidental thereto.

WHEREAS India is determined to safeguard its national security as a Nuclear Weapon State;

AND WHEREAS India is committed not to transfer nuclear weapons or other nuclear explosive devices, or to transfer control over such weapons or explosive devices, and not in any way to assist, encourage, or induce any other country to manufacture nuclear weapons or other nuclear explosive devices;

AND WHEREAS India is committed to prevent a non-State actor and a terrorist from acquiring weapons of mass destruction and their delivery systems;

AND WHEREAS India is committed to the objective of global nuclear disarmament;

AND WHEREAS India is committed to its obligations as a State Party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction;

AND WHEREAS India is exercising controls over the export of chemicals, organisms, materials, equipment and technologies in relation to weapons of mass destruction and their delivery systems under other relevant Acts;

AND WHEREAS it is considered necessary to provide for integrated legal measures to exercise controls over the export of materials, equipment and technologies and to prohibit unlawful activities in relation to weapons of mass destruction and their means of delivery.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Act in addition to other laws.

2. Save as otherwise expressly provided in this Act, the provisions of this Act shall be in addition to any other relevant Act for the time being in force in relation to any matter covered under this Act.

Extent and application.

3. (*1*) It extends to the whole of India including its Exclusive Economic Zone.

(*2*) Every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India.

(*3*) Any person who commits an offence beyond India, which is punishable under this Act, shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.

(*4*) The provisions of this Act shall also apply to —

(*a*) citizens of India outside India;

(*b*) companies or bodies corporate, registered or incorporated in India or having their associates, branches or subsidiaries, outside India;

(*c*) any ship, aircraft or other means of transport registered in India or outside India, wherever it may be;

(*d*) foreigners while in India;

(*e*) persons in the service of the Government of India, within and beyond India.

(*5*) Notwithstanding the applicability of the provisions of any other Central Act relating to any activity provided herein, the provisions of this Act shall apply to export, transfer, re-transfer, transit and trans-shipment of material, equipment or technology of any description as are identified, designated, categorised or considered necessary by the Central Government, as pertinent or relevant to India as a Nuclear Weapon State, or to the national security of India, or to the furtherance of its foreign policy or its international obligations under any bilateral, multilateral or international treaty, Covenant, Convention or arrangement relating to weapons of mass destruction or their means of delivery, to which India is a Party.

Definitions.

4. In this Act, unless the context otherwise requires,—

(*a*) "biological weapons" are —

(*i*) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; and

(*ii*) weapons, equipment or delivery systems specially designed to use such agents or toxins for hostile purposes or in armed conflict;

(*b*) "brought in transit" means to bring goods from any country into India by land, air, or amphibious means of transportation, where the goods are to be taken out from India on the same conveyance on which they are brought into India without any landing in India, but does not include a conveyance in innocent passage through Indian territory, Indian territorial waters or Indian airspace of a foreign conveyance carrying goods.

Explanation I.—A conveyance is a foreign conveyance if it is not registered in India.

Explanation II.—A conveyance is in "innocent passage" if it is not engaged in relevant activity and passes through or above Indian territorial waters or airspace without stopping or anchoring in India;

(*c*) "chemical weapons" means,—

(*i*) the toxic chemicals and their precursors, except where intended for—

(*a*) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

(*b*) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;

(*c*) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(*d*) law enforcement including domestic riot control purposes;

as long as the types and quantities are consistent with such purposes;

(*ii*) the munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in sub-clause (*i*), which would be released as a result of the employment of such munitions and devices; and

(*iii*) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in sub-clause (*ii*),

together or separately;

(*d*) "export" shall have the meaning assigned to this expression in the Foreign Trade (Development and Regulation) Act, 1992; 22 of 1992

(*e*) "fissile material" and "radioactive material" shall have the meanings assigned to these expressions in the Atomic Energy Act, 1962; 33 of 1962

(*f*) "item" means materials, equipment, and technology, of any description, notified under this Act or any other Act related to relevant activity;

(*g*) "non-State actor" is a person or entity not acting under the lawful authority of any country;

(*h*) "nuclear weapon or other nuclear explosive device" means any nuclear weapon or other nuclear explosive device as may be determined by the Central Government, whose determination in the matter shall be final;

(*i*) "public domain" means domain that has no restrictions upon dissemination of information within or from it; the existence of any legal rights to intellectual property in that information does not remove such information from being in public domain;

(*j*) "relevant activity" means,—

(*i*) the development, production, handling, operation, maintenance, storage or dissemination of a nuclear, chemical or biological weapon; or

(*ii*) the development, production, maintenance, storage or dissemination of missiles specially designed for delivering any such weapon;

(*k*) "re-transfer" means transfer of any item notified under this Act from any country or entity to which it has been exported from India, to yet another country or entity;

(*l*) "technology" means any information (including information embodied in software) other than information in the public domain, that is capable of being used in—

(*i*) the development, production or use of any goods or software;

(*ii*) the development of, or the carrying out of, an industrial or commercial activity or the provision of a service of any kind.

Explanation.—When technology is described wholly or partly by reference to the uses to which it (or the goods to which it relates) may be put, it shall include services which are provided or used, or which are capable of being used, in the development, production or use of such technology or goods;

(*m*) "terrorist" shall have the meaning assigned to this expression in the Unlawful Activities (Prevention) Act, 1967; 37 of 1967

(*n*) "trans-shipment" means to remove goods from the conveyance on which they were brought into India and to place the goods on the same or another conveyance for the purpose of taking them out of India, where these acts are carried out on a "through bill of lading", "through airway bill" or "through manifest";

Explanation.—"through bill of lading", "through airway bill" and "through manifest" means respectively a bill of lading, airway bill and manifest, for the consignment of goods from a place outside India to a destination which is also outside India without a consignee in India;

(*o*) "unlawful" means without the authority of the Central Government and the expression "unlawfully" shall be construed accordingly;

(*p*) "weapons of mass destruction" means any biological, chemical or nuclear weapons.

Power to identify, designate, categorise or regulate certain activities.

5. (*1*) The Central Government may identify, designate, categorise or regulate, the export, transfer, re-transfer, trans-shipment, or transit of any item related to relevant activity in such manner as may be prescribed.

(*2*) The Central Government may, by order published in the Official Gazette, designate or notify any item related to relevant activity for the purposes of this Act.

Power to appoint Advisory Committees.

6. For the purposes of this Act, the Central Government may appoint such Advisory Committees as it deems fit, and may appoint to them persons to exercise such powers and perform such duties as the Central Government may, by rules, prescribe.

Delegation of powers.

7. (*1*) Subject to the provisions of this Act and any other law for the time being in force, related to relevant activity, the Central Government shall have the power to direct or assign to any authority, in such manner as it may deem appropriate, such powers as may be necessary to implement the provisions of this Act.

(*2*) The Central Government may appoint a Licensing Authority and an Appellate Authority and make provisions relating to such authority and for licensing in such manner and in such form, as the Central Government may, by rules, prescribe.

(3) Without prejudice to the generality of the provisions contained in this Act, the authorities and mechanisms provided under other relevant Acts shall continue to deal with matters covered under those Acts.

Provided that in case of any doubt as to whether a matter falls within the scope of such relevant Acts or under this Act, the decision of the Central Government thereon shall be final.

Prohibition relating to weapons of mass destruction.

8. (1) No person shall unlawfully manufacture, acquire, possess, develop or transport a nuclear weapon or other nuclear explosive device and their means of delivery.

(2) No person shall unlawfully transfer, directly or indirectly, to any one a nuclear weapon or other nuclear explosive device, or transfer control over such a weapon, knowing it to be a nuclear weapon or other nuclear explosive device.

(3) No person shall unlawfully manufacture, acquire, possess, develop or transport a biological or chemical weapon or their means of delivery.

(4) No person shall unlawfully transfer, directly or indirectly, to any one biological or chemical weapons.

(5) No person shall unlawfully transfer, directly or indirectly, to any one missiles specially designed for the delivery of weapons of mass destruction.

Prohibition relating to non-State actor or terrorist.

9. No person shall, directly or indirectly, transfer to a non-State actor or terrorist, any material, equipment and technology notified under this Act or any other Act related to relevant activity:

Provided that such transfer made to a non-State actor shall not include a transfer made as such to any person acting under lawful authority in India.

Prohibition as regards intimidating acts.

10. No person shall transfer, acquire, possess, or transport fissile or radioactive material, which is intended to be used to cause, or in a threat to cause, death or serious injury or damage to property for the purpose of intimidating people or a section of the people in India or in any foreign country, or compelling the Government of India or the Government of a foreign country or an international organisation or any other person to do so or abstain from doing any act.

Prohibition on export.

11. No person shall export any material, equipment or technology knowing that such material, equipment or technology is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device, or in their missile delivery systems.

Prohibition on brokering.

12. No person who is a resident in India shall, for a consideration under the terms of an actual or implied contract, knowingly facilitate the execution of any transaction which is prohibited or regulated under this Act:

Provided that a mere carriage, without knowledge, of persons, goods or technology, or provision of services, including by a public or private carrier of goods, courier, telecommunication, postal service provider or financial service provider, shall not be an offence for the purposes of this section.

Regulation of export, transfer, re-transfer, transit and trans-shipment.

13. (1) No item notified under this Act shall be exported, transferred, re-transferred, brought in transit or transhipped except in accordance with the provisions of this Act or any other relevant Act.

(2) Any transfer of technology of an item whose export is prohibited under this Act or any other relevant Act relating to relevant activity shall be prohibited.

(3) When any technology is notified under this Act or any other relevant Act, as being subject to transfer controls, the transfer of such technology shall be restricted to the extent notified thereunder.

Explanation.—The transfer of technology may take place through either or both of the following modes of transfer, namely:—

(*a*) by a person or from a place within India to a person or place outside India;

(*b*) by a person or from a place outside India to a person, or a place, which is also outside India (but only where the transfer is by, or within the control of, person, who is a citizen of India, or any person who is a resident in India).

(*4*) The Central Government may notify any item as being subject to the provisions of this Act, whether or not it is covered under any other relevant Act; and when such item is exhibited, sold, supplied or transferred to any foreign entity or a foreigner who is resident, operating, visiting, studying, or conducting research or business within the territorial limits of India, or in its airspace or Exclusive Economic Zone, it shall constitute an offence.

Offences and penalties

14. Any person who contravenes, or attempts to contravene or abets, the provisions of section 8 or section 10 of this Act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for aiding non-State actor or terrorist.

15. (*1*) Any person who, with intent to aid any non-State actor or terrorist, contravenes the provisions of section 9 of this Act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(*2*) Any person who, with intent to aid any non-State actor or terrorist, attempts to contravene or abets, or does any act preparatory to contravention of sub-section (*1*), shall be deemed to have contravened that provision and the provision of sub-section (*1*) shall apply subject to the modification that the reference to "imprisonment for life" therein shall be construed as a reference to "imprisonment for ten years".

(*3*) While determining the punishment under this section, the court shall take into consideration whether the accused had the knowledge about the transferee being a non-State actor or not.

Punishment for unauthorised export

16. (*1*) Any person who knowingly contravenes, abets or attempts to contravene, the provisions of sub-section (*4*) of section 13 of this Act, shall be punishable with fine which shall not be less than three lakh rupees and which may extend to twenty lakh rupees.

(*2*) If any person is again convicted of the same offence under sub-section (*1*), then he shall be punishable for the second and every subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

Punishment for violation of other provisions of the Act

17. (*1*) Where any person contravenes, or abets or attempts to contravene, any provision of this Act other than the provisions under sections 8, 9, 10 and sub-section (*4*) of section 13 of this Act, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

(*2*) If any person is again convicted of the same offence under sub-section (*1*), then he shall be punishable for the second and every subsequent offence with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine.

Penalty for using false or making forged documents, etc.

18. Where any person signs or uses, or causes to be signed or used, any declaration, statement or document submitted to the competent authority knowing or having reason to believe that such declaration, statement or document is forged or tampered with or is false in any material particular, and relates to items notified under this Act or any other relevant Act, including those related to relevant activity, he shall be punishable with fine which shall not be less than five lakh rupees or five times the value of the materials, equipment, technology or services, whichever is more.

Punishment for offences with respect to which no provision has been made

19. Whoever contravenes any other provision of this Act or any rule or order made thereunder for which no specific punishment is provided, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Offences by companies

20. (*1*) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation —For the purposes of this section—

(*a*) "company" means any body corporate and includes a firm and other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

Cognizance of offences.

21. No Court shall take cognizance of any offence under this Act without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf.

Bar of jurisdiction of civil courts

22. No action or proceedings taken under section 5 and sub-sections (*1*) and (*2*) of section 7 of this Act by the Central Government or any officer authorised by it in this behalf shall be called in question in any civil court in any suit or application or by way of appeal or revision, and no injunction shall be granted by any civil court or other authority in respect of any action taken or to be taken in pursuance of any power conferred under those provisions.

Effect of other laws.

23. (*1*) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any other instrument having effect by virtue of any enactment other than this Act.

(*2*) Where any act or omission constitutes an offence punishable under this Act and also under any other relevant Act, then the offender found guilty of such offence shall be liable to be punished under that Act which imposes a greater punishment.

Protection of action taken in good faith.

24. No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer or authority of the Central Government or any other authority on whom powers have been conferred pursuant to this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made thereunder.

Special provisions as to Central Government.

25. Nothing in this Act shall affect the activities of the Central Government in the discharge of its functions relating to the security or the defence of India.

Power to make rules.

26. (*1*) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) manner of regulating any item related to relevant activity under sub-section (*1*) of section 5;

(*b*) appointment of Advisory Committees, their powers and duties under section 6;

(*c*) appointment of Licensing and Appellate Authority and the manner of licensing under sub-section (*2*) of section 7; and

(*d*) any other matter which has to be, or may be, prescribed.

(*3*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties

27. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(*2*) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

T.K. VISWANATHAN,
Secy. to the Govt. of India

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